the rent paid to the landlord within the meaning of section 13(1)(j) of the Control of Rent Ordinance, 1948. This provision reads as follows:—

"13. (1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely—

(j) where the tenant, having sub-let the premises or part thereof, receives, in respect of such sub-letting, rents (exclusive of any payment by the tenant for Municipal or Town Board services) which exceed in the aggregate seventy-five per cent. of the rent paid by the tenant."

It is not in dispute that up till the 15th September, 1952 the tenant was receiving excessive rent from the sub-tenant. On the 15th September, 1952, however, the tenant reduced the rent to a figure within the legal maximum. This was done just before the order of the Rent Board giving the plaintiff permission to take ejectment proceedings. The proceedings in the Sessions Court commenced on the 8th December, 1952 after the rent had been reduced. The notice to quit was given in May, 1952 and expired on the 30th June, 1952.

Mr. Ong Huck Lim on behalf of the appellant argued that the words "receives ... rents" in the sub-section in question relates to the time when the ejectment proceedings commenced, and as at the time when these proceedings were commenced the tenant was not receiving an excessive rent an order for possession ought not to have been given.

In the case of *K. S. Mohamed Ismail v. Choo Pin*[1], Briggs J. held that the test is whether at the time of the determination of the tenancy it was open to the landlord to take proceedings for ejectment on the footing of paragraph (j) to section 13(1) of the Ordinance.

In *Woon Guat Chin v. Lim Sian Poon*[2], Thomson J. said:—

"Construing paragraph (j) strictly it seems to me that it is contravened if at any time, or, at any rate, any time after the commencement of the Ordinance, the tenant has received rents amounting to more than seventy-five per cent. paid by him to the landlord."

If the provisions of paragraph (j) are construed in the manner suggested by Mr. Ong Huck Lim the result would be as far as I can see that a tenant could charge his sub-tenants as much rent as he chose providing that he reduced the rent before ejectment proceedings had actually been started against him in Court. Where a statute is not clear it is permissible to look at the possible results of different constructions in order to see what the intention of the Legislature was. In my opinion it could not have been the intention of the Legislature to allow a tenant to make a profit out of his sub-tenants and then to retain that profit by the simple expedient of reducing the rent when he was threatened by the landlord with ejectment.

I think the principle indicated by the judgment of Briggs J. referred to above is the correct one and that if at the date when the contractual tenancy terminates the tenant is receiving rent in excess of seventy-five per cent. of the main rent the conditions of paragraph (j) to section 13(1) are fulfilled, and the landlord is entitled to possession. In other words if, up to the time when the notice to quit terminates, the tenant has been receiving excessive rent he does not become a statutory tenant under section 16 of the Ordinance.

For these reasons I am of opinion that the decision of the learned President was right and the appeal must, therefore be dismissed with costs.

Appeal dismissed.

Solicitors: *Ong Huck Lim; Conaghan, Wreford & Thornton.*

THAM SAI MOOI (f) v. M. S. THAVER

[A. C. J. (Wilson J.) August 6, 1954]

[K. L.—Civil Appeal No. 12 of 1954]

Landlord and tenant—Control of Rent Ordinance, 1948, s. 13(1)(k)—Breach of law in force relating to Municipalities—Claim for possession—No jurisdiction of Court to exercise discretion unless expressly required to consider "reasonableness".

The plaintiff (appellant) claimed for possession of certain premises under s. 13(1)(k) of the Control of Rent Ordinance, 1948, the defendant (respondent) having been convicted of offences in breach of the law in force relating to Municipalities. He had been served with a notice to quit. The learned President of the Sessions Court held that there was a general discretion in the Court, and also a particular discretion arising from the negative and prohibitory phraseology of the opening lines of s. 13(1), and gave judgment for the defendant with costs.

Held on appeal: the trial Court has no jurisdiction to exercise a discretion unless it is expressly required to consider the question of reasonableness.

Cases referred to:—

(1) *Chen Chi Ya v. K. Nagappan* (1949) M.L.J. 164.

(2) *V. E. A. Mohaideen v. T. Mohamed* (1952) M.L.J. 209.

(3) *T. Mohamed v. V. E. A. Mohaideen* (F.M. Civil Appeal No. 20 of 1952), noted in this issue at p. xxv.

(4) *Chen Chi Wei v. Khoh Keng Chong* (1951) M.L.J. 204.

CIVIL APPEAL from Sessions Court.

K. C. Chia for the appellant.

P. P. Nair for the respondent.

Cur. Adv. Vult.

Wilson J. : —The plaintiff claimed in the Sessions Court for possession of certain premises under section 13(1)(k) of the Control of Rent Ordinance, 1948, the defendant having been convicted of offences in breach of the law in force relating to Municipalities. He had been served with a notice to quit. The learned President held that there was a general discretion in the Court, and also a particular discretion arising from the negative and prohibitory phraseology of the opening lines of section 13(1), and gave judgment for the defendant with costs.

It would appear that he was influenced by the case of *Chen Chi Ya v. K. Nagappan*[1], and the case of *V. E. A. Mohaideen v. T. Mohamed*[2]. In the latter case the learned Judge, exercising his appellate jurisdiction, stated in his judgment that if it was open to argument that a discretion did not exist under the the Control of Rent Ordinance, 1948, it was a case in which the learned President should have exercised the inherent power of the Court under section 597 of the Civil Procedure Code.

Mr. Nair, who appeared before me for the respondent, does not now rely on the decision in that case because he has discovered that that decision was overruled by the Court of Appeal in Civil Appeal No. 20 of 1952[3] in a judgment which has not been reported. In that appeal the learned Chief Justice, in a judgment with which the other Judges agreed, said :—

"We have every sympathy with the respondent who was the originator of the trouble which resulted in the present proceedings but we are unable to override the express provision of the Control of Rent Ordinance, 1948, by calling in aid Section 597 of the F.M.S. Civil Procedure Code."

The former case related to Singapore Civil Suit No. 344 of 1948[1]. In that case the plaintiff claimed possession of certain premises under section 14(1)(b) of the Singapore Control of Rent Ordinance, 1947. This section is the same as section 13(1)(b) of the Federation Control of Rent Ordinance and provides that :—

"No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely —

(b) where any obligation of the tenancy other than the payment of rent, (whether under the contract of tenancy or under the provisions of this Ordinance) so far as the obligation is consistent with the provisions of this Ordinance, has been broken or not performed by the tenant and the Court considers it reasonable that such order or judgment be made or given;".

The words "and the Court considers it reasonable that such order or judgment be made or given" clearly give the Court a discretion. However, in Singapore Civil Suit No. 344 of 1948[1], the learned trial Judge stated, after quoting certain provisions of the Ordinance with which he was dealing, as follows :—

"All these provisions are subject to this overriding consideration. Section 14 is enacted in the negative. It does not say that where this or that has occurred the landlord may recover possession. It says that the landlord shall not recover unless one or other of these events has occurred. This means that even where the landlord sets up a permissible ground, he does not succeed as of right; the Court still has a discretion and will only allow the application if it is reasonable."

These remarks would appear to me to be *obiter dicta* and do not, in my opinion, take into consideration the fact that the sub-paragraphs to sub-section (1) of section 14 of the Singapore Ordinance and section 13(1) of the Federation Ordinance do not all contain the words "and the Court considers it reasonable that such order or judgment be made or given." In particular, these words do not appear in section 13(1)(k) of the Federation Ordinance. In this connection I would draw attention to the decision of the Court of Appeal in Singapore in the case of *Chen Chi Wei v. Khoh Keng Chong*[4], in which the learned Acting Chief Justice made the following observations :—

"The next point taken in the Grounds of Appeal is that the learned Chief Justice in making an order for possession under s. 14(1)(b) of the Control of Rent Ordinance, 1947, for breach of the obligations of the tenancy did not direct his mind to the question of 'reasonableness', which is an essential requirement to the making of an order for possession under s. 14(1)(b). But the learned Chief Justice also found as a fact that the defendant was responsible for the alterations to the premises, which brought the case under the provisions of s. 14(1)(b). No consideration of "reasonableness' is required under that paragraph as is required under paragraph (b)."

From this it would seem that the Court of Appeal was of opinion that the trial Court had no jurisdiction to exercise a discretion unless it is expressly required to consider the question of reasonableness.

In these circumstances, this appeal must be allowed with costs. The judgment of the Cout below must set aside and judgment entered for the plaintiff for possession of No. 83, Bukit Bintang Road, Kuala Lumpur, and the defendant must pay the costs of the proceedings in the Sessions Court. Possession to be given within three months from to-day.

Appeal allowed.